

COMPLIANCE BOARD OPINION No. 96-5
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May 1, 1996

Timothy R. Fisher

The Open Meetings Compliance Board has considered your complaint regarding an alleged violation of the Open Meetings Act by the Mayor and Council of the Town of Berlin on February 19, 1996. Your complaint alleges a number of separate violations in connection with that meeting, including a violation of the Act's notice provision, discussion of matters in a closed meeting that should have been conducted in an open meeting, and a failure to comply with the Act's subsequent disclosure requirements about a closed meeting.

In a timely response on behalf of the Mayor and Town Council of Berlin, Town Attorney Raymond D. Coates, Esquire, responded that the meeting was advertised continuously, twenty-four hours a day, on a local cable television channel for several days preceding the meeting. Mr. Coates also responded that, at the meeting, the Mayor and Town Council discussed the dismissal of an employee. In addition, according to Mr. Coates, the Mayor and Town Council discussed "the administration of the employee leave policy." Finally, the Town acknowledges that it failed to approve minutes containing disclosure about the February 19, 1996 meeting at the next open meeting, held on March 11, 1996, but instead approved the minutes at the March 25, 1996 meeting.

The first step in any analysis of the Open Meetings Act is to consider whether the Act applies to the meeting in question. Here, there is no question that the Mayor and Town Council of Berlin is a "public body" and was holding a "meeting" on February 19, 1996. See §10-502(g) and (h) of the State Government Article, Maryland Code. The determinative question about the application of the Act, therefore, is whether the closed session of the Mayor and Town Council concerned matters that are within the scope of the Act. If so, the Act's substantive and procedural requirements apply; if not, none of the requirements applies.

The Open Meetings Act "does not apply to ... a public body when it is carrying out ... an executive function." §10-503(a)(1)(i). "Executive function" includes "the administration of ... a law of a political subdivision of the State."

§10-502(d)(1)(ii).¹ The “executive function” exclusion means that the Act does not apply when a public body is “administering any identifiable law or policy already in force and effect.” Compliance Board Opinion 95-2, at 3 (internal quotation marks omitted).

According to Mr. Coates, the Mayor and Town Council discussed two things in closed session: “dismissal of an employee and the administration of the leave policy in the employee policy manual.” In the opinion of the Compliance Board, both of these matters fall within the executive function exclusion. Presumably, the discussion of whether to dismiss the employee involved the application of the town’s existing personnel policies. A discussion of how best to administer an existing leave policy — as distinguished from a discussion of how the leave policy might be changed — also falls within the executive function exclusion. The Mayor and Town Council were carrying out their managerial responsibilities under the Town Code and were “simply administering a detail of ... preexisting law and policy.” Compliance Board Opinion 95-7, at 4 (October 18, 1995). Thus, insofar as the Mayor and Town Council were discussing the existing employee leave policy at their closed session on February 19, 1996, no violation of the Open Meetings Act occurred, because the Act was not applicable and the Act’s substantive and procedural requirements did not apply.

We do wish to comment further, however, on one aspect of the complaint: the manner of notice. So as to give guidance to public bodies, we shall assume for discussion’s sake that the notice provision of the Act, §10-506, was applicable. This section contains requirements about timing, format, and method.

As to timing, “a public body shall give reasonable advance notice” of an open or closed meeting. §10-506(a).² The Attorney General has advised that “notice of a future meeting should be given as soon as is practicable after the body has fixed the date, time, and place of its next meeting.” Office of the Attorney General, *Open Meetings Act Manual* 13 (2d ed. 1995).

¹ If an activity falls within any of the Act’s other defined “functions,” the activity is not an “executive function.” §10-502(d)(2). The personnel-related items discussed at the February 19 meeting fall within none of the other defined functions.

² The written notice is to include the date, time, and place of the meeting, as well as notice, if appropriate, that a part or all of the meeting will be closed. §10-506(b)(2) and (3).

As to the form of notice, the Act provides that “[w]henever reasonable,” a notice is to “be in writing.” §10-506(b)(1). The apparent legislative objective is to ensure a clearly documented version of the notice and to enable copying of the notice by anyone interested in doing so. In the Compliance Board’s view, the scrolling of a meeting notice on television does not satisfy the requirement that a notice “be in writing” unless circumstances make a writing unreasonable.³ A public body using a cable television notice should have a written version available to the public.

Finally, the Act gives public bodies a choice about the method of providing notice. For a local government like Berlin, three methods are available: “by delivery to representatives to the news media who regularly report on sessions of the public body or the activities of government of which the public body is a part”; “if the public body has previously been given public notice that this method will be used, by posting or depositing the notice at a convenient public location at or near the place of the session”; or “by any other reasonable method.” §10-506(c)(2), (3), and (4). The Compliance Board believes that a repeated announcement on cable television for several days in advance of a meeting is a “reasonable method” of providing public notice, at least where most residents of the Town have cable television. However, the Compliance Board recommends that any public body wishing to use this method of notice first announce that it intends to do so, so that reporters and others understand that the cable channel is the setting in which they should look for information about future meetings.

OPEN MEETINGS COMPLIANCE BOARD

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³ The provision of written notice may not be “reasonable,” for example, if an emergency meeting were held.